

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

The Travelers Indemnity Company,

Plaintiff,

v.

MEMORANDUM OPINION
AND ORDER
Civil No. 06-4300

Michael Bundul, Trustee for heirs and
Next of Kin of Carol Bundul, Decedent
Michael Bundul and Benjamin Bundul,

Defendants.

Charles D. Slane, Terry & Slane, PLLC for and on behalf of Defendants.

This matter is before the Court upon Defendant's motion to dismiss on the grounds of abstention. Plaintiff did not timely respond to the motion, and this Court denied Plaintiff's request for an extension to file a responsive brief.

Background

This action was filed on October 25, 2006. Plaintiff seeks a declaratory judgment as to the determination, pursuant to state law, of the duty to defend or to indemnify Benjamin Bundul under an insurance policy issued to his parents, Michael and Carol Bundul, for a motor vehicle accident involving Benjamin as the driver, and in which Carol was fatally injured.

One week prior to the commencement of this action, Defendants filed an action in Minnesota state court. That action is also a declaratory judgment action, seeking a declaration of coverage and thus a duty to defend and indemnify pursuant to state law. Defendants also named their insurance agent, Dick Devine and his agency - David Agency, Inc. Because of the inclusion of the agent and the agency, Defendants assert that the state court action is more comprehensive than the federal case.

Defendants ask that this Court to exercise its discretion to dismiss this case on the basis of abstention because of the previously filed state court action.

A district court has broad discretion in determining whether to exercise jurisdiction in a declaratory judgment action, when there are parallel proceedings pending in state court. Wilton v. Seven Falls Co., 515 U.S. 277, 282-90 (1995) (reaffirming Brillhart v. Excess Ins. Co. of America, 316 U.S. 491 (1942)). In this case, there can be no question that parallel, and more comprehensive proceedings are pending in state court. These are the same circumstances that were present in both Wilton and Brillhart in which the Court held that the district court did not abuse its discretion when it declined to exercise jurisdiction over pending federal declaratory judgment actions in favor of parallel state court actions.

Accordingly, this Court will grant the motion to dismiss.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss [Doc. No. 3] is
GRANTED.

Date: February 2, 2007

s / Michael J. Davis
Michael J. Davis
United States District Court

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